

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6532

PETITION OF MARVIN AND PAOLA CONTRERAS

OPINION OF THE BOARD

(Hearing Held: July 26, 2017)

(Effective Date of Opinion: August 8, 2017)

Case No. A-6532 is an application by Marvin and Paola Contreras (the "Petitioners") for five variances from the front, side street and side setback requirements of Section 59.4.4.9.B.2 of the Zoning Ordinance, as follows:

1. The required front setback on Eastern Avenue is 25 feet. The existing house is at 16 feet, so the Petitioners will need a variance of nine (9) feet for the front of the house.

2. A front porch along Eastern Avenue would typically have a nine (9) foot exemption from the front setback requirement. This would require the porch to have a 16 foot front setback. Since the house is at 16 feet, the existing porch will need a nine (9) foot variance to be rebuilt and repaired.

3. The side street setback requirement for 5th Avenue is 25 feet. The existing house is 20 feet from the side street lot line, so the Petitioners will need a five (5) foot variance from the side street setback requirements.

4. A porch along 5th Avenue would typically have a nine (9) foot exemption from the side street setback requirement. This would require the porch to have a 16 foot side street setback. Since the house is at 20 feet, the existing porch will need a five (5) foot variance to be rebuilt and repaired.

5. The left side setback (i.e. the side setback along the northwest property line) is required to be seven (7) feet, and the existing house is two (2) feet. Therefore, the Petitioners need a variance of five feet on the left side of the house.

The Board of Appeals held a hearing on the application on Wednesday, July 26, 2017. Petitioners Marvin and Paola Contreras appeared pro se at the hearing, along with Cesar Umana, their general contractor.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 6, Block 3, Pinecrest Subdivision, located at 6313 Eastern Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a rectangular corner lot with an area of 6,427 square feet, bordered on the (shorter) southwest side by Eastern Avenue, and on the (longer) southeast side by 5th Avenue. See Exhibits 4 and 7.
2. The Building Permit Denial indicates that the Petitioners are seeking to construct a two-story addition directly on top of an existing one-story home. At the hearing, their contractor testified that because of the height restrictions in the Zoning Ordinance, the Petitioners may not be able to construct a two-story addition, and so he testified that they were now planning to bump out the rear of the home by five or ten feet, and that this rear addition would follow the side setback of the existing house. See Exhibit 10. The existing house is located approximately 16 feet from Eastern Avenue, twenty feet from 5th Avenue, and two (2) feet from the shared side lot line along the property's northwest side. See Exhibit 4. The proposed addition would not expand the footprint of the existing house except to the rear, as noted above.
3. Per SDAT, the Petitioners purchased the subject property earlier this year. The Justification Statement submitted by their contractor indicates that their house was originally built in 1935, at which time the property was part of Prince George's County, Maryland, and that it was not until 1997 that their property was annexed into Montgomery County. The Petitioners' Statement notes that "[t]he house itself is $\frac{3}{4}$ nonconforming to Montgomery County's Zoning ordinances and standards, since the house was built to Prince George's County standards during that era." Accordingly, the Statement asserts that the proposed construction "uses an existing legal nonconforming property or structure...." See Exhibit 3.
4. The Justification Statement further asserts that the Petitioners "have a tree that will be affected if petitioner decides to build 5' back to the house." It notes that "Takoma Park is environmentally friendly so cutting the tree down would not be ideal." See Exhibit 3.
5. The Petitioners are not responsible for the original construction of the home.
6. Petitioner Marvin Contreras testified about the circumstances under which he and his wife came to own this home. He testified that they needed to expand their home not

only for their growing family, but also to accommodate their extended family as needed in the future (parents, grandmother). He testified that his neighbors on both sides have additional stories on their homes.

7. Petitioner Paola Contreras testified that the proposed variances were modest. She testified that three sides of the existing home are nonconforming, and that an addition that conformed with the setbacks imposed by the Zoning Ordinance would resemble a bowling alley. She testified that except for the rear addition, they were requesting to build over their existing structure, adding that they intended to re-open an existing front porch which had been closed at some point in the past. She echoed her husband's testimony about needing the addition to accommodate their own growing family and their extended family, should that need arise.

8. The Petitioners' contractor testified that the property is three-fourths nonconforming, and stressed that they were asking to build on the existing footprint except for the rear addition, which would be outside of that footprint. He testified that the Petitioners would probably not be allowed to add a full third floor because of height restrictions, and that the proposed rear bump-out would help hold the load from the new second floor because it would have a stronger foundation than the existing home.

FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and that of their witness, and based on the evidence of record, the Board finds that the requested variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the proposed development uses an existing structure which was built in 1935, when the property was located in Prince George's County. The Board further finds that the Petitioners' existing home does not comply with the setbacks required by the Montgomery County Zoning Ordinance, and is nonconforming. Accordingly, the Board finds that the application satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the house on the subject property was built in 1935. Thus the Board finds that the Petitioners, who purchased this property in 2017, took no actions to create its unusual situation or its placement on the subject property.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of the Petitioners and their contractor, and on the Statement in the record at Exhibit 3, that the requested variances are the minimum necessary to allow the proposed construction to proceed. The Board finds that the history of this property, having originally been located in Prince George's County, compounds the challenges this property faces in meeting the Montgomery County Zoning Ordinance. The Board finds that the requested variance is minimal in that it allows the construction of a two-story addition directly over an existing home, and would not increase the footprint of the existing house, except as needed for the afore-mentioned rear bump out, or extend any further into the setbacks than the existing house already encroaches. The Board further finds that without the grant of these variances, the Petitioners could not rebuild and repair the existing porches. Finally, the Board finds that if the Petitioners were to comply with the required setbacks, per the testimony of Mrs. Contreras, their addition would resemble a bowling alley. Thus the Board concludes that compliance with the required setbacks, which are violated by the existing house, would pose a practical difficulty for the Petitioners, and that the grant of these variances is the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the Takoma Park Master Plan, which seeks to "[p]reserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout Takoma Park."

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the record contains no opposition to the proposed construction, which again would continue the residential use of this home. In addition, the Board notes, based on the testimony of Mr. Contreras, that neighbors on both sides of the subject property have additional stories on their homes. Thus the Board finds that the grant of this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

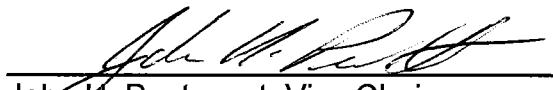
Accordingly, the requested variances to allow the proposed construction are **granted**, subject to the following condition:

1. Petitioners shall be bound by their testimony and that of Mr. Umana, and by their exhibits of record.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Stanley B. Boyd, with Edwin S. Rosado and Bruce Goldensohn in

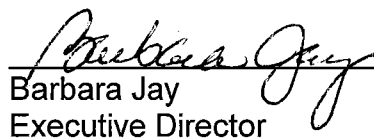
agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of August, 2017.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.